Amy Hunley
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Case No.: S0200CV201900151 HON. LAURA CARDINAL



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## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF COCHISE

Tay and Jarrad's LLC, an Arizona limited liability company d/b/a Ace Vending of Tucson,

CASE NO.

Plaintiff,

٧.

Borderland Vending Company, LLC, an Arizona limited liability company,

**COMPLAINT** 

HON.

## Defendant.

For its Complaint against defendant Borderland Vending Company, LLC ("Defendant"), Plaintiff Tay and Jarrad's LLC ("Plaintiff") alleges:

- 1. Plaintiff is a limited liability company duly formed and registered with the Arizona Corporation Commission, with its primary place of business in Yuma.
- 2. Defendant is a limited liability company duly formed and registered with the Arizona Corporation Commission, with its primary place of business in Willcox.
- 3. This Court has jurisdiction over the subject matter of this lawsuit pursuant to Ariz. Const., Art. 6, and ARS 12-123.
- 4. The demand or value of property in controversy in this Complaint, exclusive of interest and costs, exceeds the minimum jurisdictional requirements.
  - 5. Venue is proper in this Court pursuant to ARS 12-401.

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- 6. On or about January 1, 2015 Plaintiff and Defendant entered into a contract for the purchase/sale of certain vending machine company assets owned by Defendant (the "Contract").
- 7. Pursuant to the Contract, Plaintiff agreed to purchase certain vending machine accounts from Defendant.
- 8. Defendant agreed not to compete with Plaintiff in Graham County or any bordering county.
  - 9. Plaintiff was required to pay a total of \$15,000, plus certain commissions.
- 10. Additionally, under paragraph 2, the Contract required Plaintiff to pay monthly 20% of gross sales on the accounts.
- 11. However, the commission payments were to terminate as to any/all accounts that Plaintiff "lost."
- 12. The word "lost" is defined as something that is "no longer possessed." Merriam-Webster Dictionary <a href="https://www.merriam-webster.com/dictionary/lost">https://www.merriam-webster.com/dictionary/lost</a>.
- 13. The Contract also included a minimum payment provision requiring Plaintiff to pay Defendant a minimum monthly payment of \$1,150 if the total amount of the commissions equaled less than that amount.
- 14. However, the \$1,150 minimum monthly payment was to be reduced by any/all amounts of any accounts lost, as described in paragraph 2.
- 15. Plaintiff paid the initial \$15,000 during the first three months after executing the Contract.
- 16. Plaintiff also made full monthly commission payments to Defendant from March 2016 through April 2017.
- 17. At Defendant's demand, from May 2017 to August 2018 Plaintiff made monthly payments in the amount of \$2,500, a total of \$40,000.
  - 18. In April 2017 Plaintiff sold all of the accounts to a third-party.

- 19. In November 2017, Defendant and/or its owner and/or its affiliate purchased all of the accounts from the third-party.
- 20. Since the time of that purchase, Defendant and/or its owner and/or its affiliate has been conducting business and profiting from the accounts throughout Graham County.
- 21. Plaintiff lost all of the accounts at the time of Plaintiff's sale of the accounts to the third-party, from which time onward Plaintiff permanently ceased to possess the accounts.
- 22. Alternatively, plaintiff lost all of the accounts as of the date upon which the third-party transferred the accounts to Defendant and/or its owner and/or its affiliate (November 2017 to the present).
- 23. At Defendant's demand, between April 2017 and March 2019, Plaintiff made payments in excess of amounts owed.

## CAUSE OF ACTION – BREACH OF CONTRACT/BAD FAITH

- 24. Defendant knowingly and voluntarily entered into the Contract with Plaintiff.
- 25. As described above, by demanding payments after Defendant's right to receive payments had terminated under the Contract, and otherwise, Defendant breached the Contract.
- 26. Defendant's acts, described above, were in breach of the implied covenant of good faith and fair dealing.
- 27. Plaintiff suffered damages as the direct, proximate cause of Defendant's breaches.

## **CONSTRUCTIVE TRUST**

- 28. Defendant's receipt of funds in excess of amounts owed under the Contract resulted in a constructive trust.
  - 29. Defendant holds the excess funds in constructive trust for Plaintiff's benefit.
  - 30. Plaintiff is entitled to disgorgement and return of all such overpaid funds.

WHEREFORE, Plaintiff prays for judgment against Borderland Vending Company, LLC as follows:

- 1. General and special damages in a liquidated amount to be determined by a jury at trial;
- 2. Disgorgement and return of funds held in constructive trust for Plaintiff's benefit;
- 3. Costs and attorney's fees pursuant to ARS 12-341.01 and ARS 12-341;
- 4. Interest on the plaintiff's liquidated claim for damages from when first due until paid in full, pursuant to ARS 44-1201; and
- 5. Such other relief as the Court deems appropriate under the circumstances.

DATED this 18th day of April, 2019.

LAIRD LAW PLLC

Brian A. Laird

Attorney for Plaintiff